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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re M.S., JR., a Person Coming Under
the Juvenile Court Law.

B205375 consolidated with B206464
x-refs. B202928 & B190304

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

(L.A.S.C. No. CK 61213)

Plaintiff and Appellant,

v.

M.S., SR. et al.,

Defendants and Respondents.

In re M.S., JR., a Person Coming Under
the Juvenile Court Law.

B206464
(L.A.S.C. No. CK 61213)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.S., SR.,

Defendant and Appellant;

D.S. et al.,

Interveners and Appellants.

APPEALS from orders of the Superior Court of Los Angeles County.
Margaret S. Henry, Judge. Affirmed (B205375; B206464).

B205375

Amir Pichvai for Plaintiff and Appellant.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Respondent M.S., Sr.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Respondent B.H.

Aida Aslanian, under appointment by the Court of Appeal, for Minor.

B206464

M.S., Sr., in pro. per., and Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant.

D.S., in pro. per. for Intervener and Appellant D.S.

S.S., in pro. per., for Intervener and Appellant S.S.

Amir Pichvai for Plaintiff and Respondent.

The Los Angeles County Department of Children and Family Services (DCFS) appeals from an order of the juvenile court granting the section 388¹ petition of mother to place her child in her care and custody (B205370). In a separate appeal, father appeals from the court's order appointing counsel to represent him in the section 388 proceedings (B206464) and the paternal grandfather appeals from the court's exercising subject matter jurisdiction over the father and the child (B206464). We affirm the orders.

¹ All statutory references are to the Welfare and Institutions Code.

FACTS AND PROCEEDINGS BELOW

We detailed the background facts of this case in a previous opinion and so we will not repeat them here.² In that opinion we granted the petition of the father challenging the court’s order retaining the child in foster care and refusing to place the child with the father’s parents. Among other things, we ordered the court “to conduct a new hearing to determine whether there is any evidence to suggest that it would not be in [the child’s] best interests to place him with [his paternal grandparents].”

While the father’s writ petition was pending before this court, DCFS and the child’s mother each filed section 388 petitions in the juvenile court. DCFS sought an order placing the child with the paternal grandparents. The mother sought an order placing the child with her. The court took evidence and heard argument from the mother and DCFS. It also heard argument from counsel for the child and the father, both of whom supported the petition of the mother for care and custody of the child. The court granted the mother’s petition and ordered the child placed with her on condition she continue her twice-a-week counseling and that father not be allowed in the house when the child is present. The court ordered the petition of DCFS off calendar as moot. DCFS filed a timely appeal.³

DISCUSSION

A. THE DCFS’S APPEAL (B205375)

Section 388 authorizes a modification of a prior dependency order based upon a showing (1) of changed circumstances and (2) that a modification based on the changed circumstances would be in the child’s best interests. (*In re Kimberly F.* (1997) 56

² *M[.]S. v. Superior Court* (Jan. 24, 2008, B202928) [nonpub. opn.].

³ Two weeks after the juvenile court made its order placing the child with his mother, DCFS filed a petition for writ of supersedes in this court. We denied the petition. In doing so we noted that when we filed the opinion described above we were “under the mistaken belief that the child remained in foster care” but that we “are now aware that the child has been returned to his mother under the Department’s supervision, and that *everyone* except the Department is satisfied with this result.” (Italics in original.)

Cal.App.4th 519, 526.) We review the court’s determination of the petition for abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.)

We find no abuse of discretion here. The hearing, held on January 17, 2008, produced the following undisputed evidence. Mother had been having unmonitored weekend visits with her child on a consistent basis since July 2007. She also had extended unmonitored visits with the child during the Thanksgiving and Christmas holidays. No incidents of abuse or other problems occurred during any of these visits. Mother was voluntarily participating in individual counseling twice a week. Mother had a plan for protecting the child in the future including “always watch[ing] over him like a hawk.” There exists a close bond between mother and child.⁴

Nevertheless, undeterred by the lack of any evidence, DCFS opposed mother’s petition because it “suspected” father was present during mother’s visits with the child in violation of the court’s order and it doubted that mother would protect the child from the father whom it continued to focus on as the person who abused the child. In spite of numerous surprise searches, DCFS admitted it never found father at the homes of the mother or the grandparents on weekends when the child was visiting. DCFS continues to treat the father as the prime suspect in the child’s abuse notwithstanding our finding in an earlier appeal that there is *no* substantial evidence that the father was the abuser.⁵

We conclude DCFS has failed to demonstrate the court abused its discretion by ordering that the child be placed in the care and custody of his mother. We therefore affirm the order.

B. THE FATHER’S APPEAL (B206464)

We appointed counsel to represent father on his appeal. Counsel informed us that, after examination of the record, she was unable to identify any arguable issues. We

⁴ At the close of the hearing, the court stated: “I am also really glad [the child] was here today, so I could see who he’s most bonded to. There’s no question it’s mom.”

⁵ *In re M[.] S.* (Dec. 21, 2006, B190304) [nonpub. opn.].

advised father that he has the right to personally submit any contentions that he wishes us to consider.

On July 10, 2008, father filed a letter brief. The letter brief contains no discussion of the complaint voiced in his notice of appeal that the court erred in appointing counsel for him at the 388 hearing. Accordingly, that objection is forfeited. His letter brief raises no other issues.

C. THE GRANDFATHER’S APPEAL (B206464)

The grandfather objects to the juvenile court exercising subject matter jurisdiction over father and the child. This objection, apparently, is based on an order apparently appointing grandfather as guardian of the child. This objection fails. Section 300 plainly states: “Any child who comes within any of the following descriptions is *within the jurisdiction* of the juvenile court” (Italics added.)

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

DUNNING, J.*

* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.